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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,235	12/05/2003	Roger Thomas	P-US-PR 1112	9207
28268 7590 12/20/2007 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286			EXAMINER SELF, SHELLEY M	
			ART UNIT 3725	PAPER NUMBER
			MAIL DATE 12/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/729,235

Applicant(s)

THOMAS, ROGER

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 5-10, 12, 13 and 15-20 is/are rejected.
- 7) ☒ Claim(s) 4 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/2/05</u>  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 9, 2007 has been entered.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

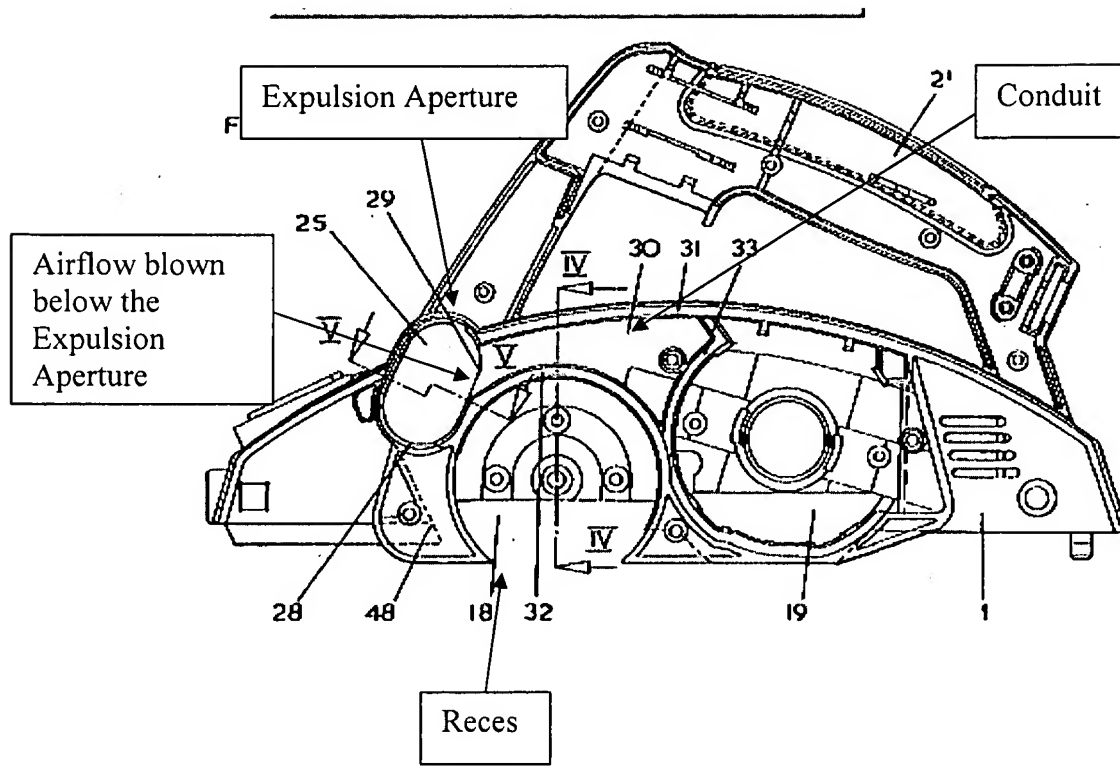
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15, 3 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Eichberger et al. (5,815,934). With regard to claims 15-20, Eichberger discloses a planer comprising a shoe, the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1), the body defining an exhaust passage (25) having a first exhaust aperture on a first side of the body, and a second exhaust aperture on a second side of the body (26, 27; col. 3, lines 55-58) and including a wall, the wall defining a recess (18): a cutting drum (15) rotatably mounted within the recess, the cutting drum projects through the aperture in the shoe; an expulsion aperture (28, 29; col. 3, lines 59-67) connecting said recess to said exhaust passage (col. 3, lines 64-67; a

motor (8); a cutting blade mounted a periphery of the cutting drum (col. 3, lines 18-20) an airflow generator (11); a conduit defined within the body (30); and a removably deflector (54), the deflector insertable through one of the first and second exhaust apertures and connectable to the exhaust passage for guiding the airflow and entrained debris from within the body to outside of the body. As to the recitation, "for directing the airflow from said airflow generator into said exhaust passage...that results in said airflow flowing in a substantially upward direction to entrain and remove debris..." is an intended use recitation and does impart any structural limitation and is therefore not given patentable weight. Examiner suggests clear and positive recitation of the structure of the conduit and its mechanical cooperation and correlation as the conduit relates to the body of the planar. Merely reciting "a conduit defined within the body" is understood in its broadest recitation to any channel/tube through which something, i.e., debris flows or is conveyed.

With regard to claim 3, Eichberger discloses the cutting action of the blade causes debris created by the cutting to be ejected from the recess (18) through the expulsion aperture (29) and into the exhaust passage (25) substantially along a first direction and the airflow in the conduit is directed within the body to a point below the expulsion aperture (Examiner notes the aperture 29 and the airflow from fan 11 through conduit 30 b/c the aperture height is greater than the conduit 30 height, the air is blown at a point below the aperture 29) and then is blown across the expulsion aperture substantially along a second direction where the first direction and the second direction of airflow intersect at an acute angle (fig. 3).



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 3, 5-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier (DE3542263) in view of Eichberger et al. (5,815,934). With regard to claims 15, 9, 10 and 12, Maier discloses a planer comprising a shoe, the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1), the body defining an exhaust passage (fig. 1) having a first exhaust aperture on a first side of the body, and a second exhaust aperture on a second side of the body (17) and including a wall, the wall defining a recess (fig. 1): a cutting drum (11) rotatably

mounted within the recess, the cutting drum projects through the aperture in the shoe; an expulsion aperture (fig. 1) connecting said recess to said exhaust passage (fig. 1); a motor (8); a cutting blade mounted a periphery of the cutting drum (fig. 1), a conduit defined within the body (30) and a pivotally mounted flap (21). Maier does not disclose an airflow generator or a removable deflector.

It would have been obvious to the skilled artisan at the time of the invention to construct Maier's deflector (22) to be removable because forming inseparable, i.e., removable parts what was formerly constructed as an integral structure requires only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Moreover, as noted above, Eichberger teaches in a similar art, the use of an airflow generator (11) and a removable deflector to improve airflow for efficient discharging of debris. Because the references are from a similar art and deal with a similar problem, i.e., debris discharge from a planar it would have been obvious at the time of the invention to provide, Maier with an airflow generator and removable deflector so as to improve airflow for efficient debris discharge as taught by Eichberger.

With regard to claim 3, Maier discloses wherein a wall in the body also defines an expulsion aperture and the conduit (23) is connected to the recess (fig. 1) by the expulsion aperture (16) and the cutting action of the blade causes debris created by the cutting to be ejected from the recess through the expulsion aperture (16) and into the conduit substantially along a first direction and the airflow in the conduit is directed within the body to a point below the expulsion aperture and then is directed by the conduit to be blown across the expulsion aperture along a second direction the first direction of the debris and the second direction of the airflow

interest at an acute angle. Examiner notes the airflow traveling along a line, the debris/chips traveling along a second different line the two lines to intersect so as to allow the airflow to blow/direct the debris out of the exhaust aperture. Because the two lines of direction intersect and supplemental angles are formed, one angle being acute and one being obtuse, thus Maier obviously discloses intersecting of the travel directions at an acute angle.

With regard to claims 5 and 6, Maier discloses wherein the conduit (23) directs the airflow over the deflector (22) prior to directing the airflow to the point below the expulsion aperture. Examiner notes the ability of the deflector to rotate facilitates direction airflow over the deflector prior to directing the airflow below the expulsion aperture.

As to the first and second positions (clms. 7, 8), examiner notes the flap (21) to be rotatable, thus positions are determined by the operator, i.e., the operator may stop rotation of the flap at any position within the range of rotation, therefore having at least a first and second position.

With regard to claim 13, it is obvious in Maier that the flap be biased to a first or second position so as to adequately close either a first opening of the exhaust aperture (17) or a second opening so as to allow the debris/chips to be ejected from either side of the body via the exhaust openings (17).

***Allowable Subject Matter***

Claims 4 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:  
For the reasons noted in the Office Action mailed (8/2/06).

***Response to Arguments***

Applicant's arguments with respect to claim have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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/Shelley Self/  
Primary Examiner  
Art Unit 3725

December 13, 2007